Supreme Court, U.S.
FILED
NOV 18 1985
JOSEPH F. SPANIOL, JR.
CLERK

(6)

No. 85-12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

POTT INDUSTRIES INC.,
Petitioner,

vs.

INGRAM RIVER EQUIPMENT, INC.,
Respondent.

On Petition For A Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

SUPPLEMENTAL BRIEF FOR RESPONDENT

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TABLE OF AUTHORITIES

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Cases:

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Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303 (1927) 2

The Conqueror, 166 U.S. 110, 17 S.Ct. 510 (1897) 2

The Potomac, 105 U.S. 630, 26 L.Ed. 1194 (1882) 2

Other Authority:

Rule 22.6, Supreme Court Rules 1

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Respondent Ingram River Equipment, Inc. files this response to the new brief of Petitioner Pott Industries, Inc., denominated as "Supplemental Brief" while the Petition for Writ of Certiorari is pending in this matter.

Pott's Supplemental Brief was presumably filed under the authority of Rule 22.6 which provides: "Any party may file a Supplemental Brief at any time while the Petition for Writ of Certiorari is pending calling attention to new cases or legislation or other intervening matter not available at the time of the party's last filing." The rule is designed to encourage parties to bring to the Court's attention new developments of which it might not otherwise be aware. Since the only new element suggested in Pott's Supplemental Brief is the granting of certiorari in *East River Steamship Corp. v. Delaval Turbine, Inc.*, 752 F.2d 903

(3rd Cir. en banc 1985) *cert. granted,* No. 84-1726 (October 7, 1985), this Court did not require prompting from the parties as to its own actions.

In fact, Pott in its brief only emphasizes the differences betwen *East River* and the instant case, which Ingram has already pointed out in its Brief in Opposition to the Petition for Certiorari (pp. 10-15): that the cases involve different theories of tort liability and different standards of proof. *East River* was decided on the basis of strict liability, a relatively new tort theory in admiralty, and involved the issue of economic loss in that context. *Ingram - Pott,* however, was decided by the Courts below on the basis of negligence. Ingram bore the burden of proving that Pott was a wrongdoer (not necessary in strict liability), requiring that it be responsible for its negligence.

That economic loss is recoverable if caused by negligence is, in fact, a well established doctrine in admiralty recognized by this Court for the past hundred years. *The Potomac,* 105 U.S. 630, 26 L.Ed. 1194 (1882); *The Conqueror,* 166 U.S. 110, 17 S.Ct. 510 (1897).

Pott now urges another difference between *East River* and the instant case, by its suggestion that *East River* may be ruled and governed by *Robins Dry Dock & Repair Co. v. Flint,* 275 U.S. 303 (1927). *Robins* held that a tortfeasor who damaged the property of another did not incur liability to a third party sustaining loss as a result, because of a contract, unknown to the doer of the wrong, between the third party and the owner of the damaged property. The suggested additional difference merely emphasizes the fact that the *East River* and *Ingram - Pott* cases involve substantially different issues.

Pott indulges the facile assumption that this Court overlooked the possibility that *Robins* might determine the outcome of the *East River* case. It is perhaps more reasonable to assume that this Court did recognize the difference between *East River*

and *Ingram - Pott,* which Ingram pointed out in its original brief, and decided, for that reason, that the cases should not be consolidated.

CONCLUSION

It is submitted that Pott's Supplemental Brief further emphasizes the differences between *East River* and *Ingram-Pott* and that the Petition for a Writ of Certiorari in the Ingram - Pott case should be denied.

Respectfully submitted,

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November 15, 1985